

Dr. Handshy examined the claimant's back and found tenderness and spasms. He could not rule out disc involvement and therefore scheduled the claimant for a CT scan on February 12, 1993, at the Labette County Medical Center in Parsons, Kansas. The CT scan showed minimal diffused bulging of the discs at all levels between L3 and S1, with mild narrowing at L4-L5 and L5-S1 interspaces. Dr. Handshy scheduled the claimant to return for further treatment on February 23, 1993. However, the claimant called Dr. Handshy and requested medical treatment closer to his home in Missouri. Claimant testified that Dr. Handshy indicated he would consider the request, but never contacted him in reference to the request.

The claimant testified that on numerous occasions in 1993 he attempted to contact either Dr. Handshy or the respondent with a request for additional medical treatment. His testimony was supported by telephone records admitted into evidence. In July 1993, Dr. Handshy's office finally notified him that Dr. Handshy was no longer in practice in Erie, Kansas, and had moved to the state of Texas. During his telephone contacts with the respondent, they indicated that he would be contacted and notified in reference to his request for medical treatment. It was not until sometime in January 1994, that the respondent finally gave the claimant the telephone number of the workers compensation insurance carrier and he then personally contacted the insurance carrier. The insurance carrier referred him first for medical treatment to a Dr. Ballard in Parsons, Kansas, on March 28, 1994. Dr. Ballard, after he examined the claimant, subsequently referred the claimant to David A. Ball, M.D., an orthopedic surgeon in Joplin, Missouri, for examination and treatment.

Dr. Ball examined the claimant on April 1, 1994, and found that he was still suffering from low back pain and left leg pain as a result of his work-related injury of February 4, 1993. Dr. Ball concluded, in a letter to the insurance carrier of April 1, 1994, "In view of this man's prolonged difficulties and his apparent positive straight leg raising tests, it would be my recommendation that a myelogram and post-myelogram CT scan be carried out."

The Preliminary Hearing transcript establishes that the respondent reported claimant's accident to the Director of Workers Compensation, as required by K.S.A. 44-557(a), on February 23, 1993. Therefore, K.S.A. 44-520a requires that the claimant serve upon the respondent a written claim for compensation within two-hundred (200) days after the date of accident or, in cases where compensation payments have been suspended, within two-hundred (200) days after the date of last payment of compensation. However, the respondent was on notice that claimant was seeking additional medical treatment and claimant was under the assumption that the respondent still had authorized medical treatment. Under these circumstances, the respondent has a positive duty to notify the claimant that the medical treatment has been terminated if the respondent intends to rely on the two-hundred (200) day written claim statute. See Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 515, 516 P.2d 1008 (1973). The record in this case is uncontradicted that the respondent never notified the claimant that it would no longer provide medical treatment for the claimant's work-related injuries. The record establishes that the claimant contacted the respondent and its insurance carrier numerous times and afforded them the opportunity to notify him that medical treatment had been discontinued. Neither the respondent nor the insurance carrier did such. In fact, additional medical treatment was finally provided by the respondent on March 28, 1994, with Dr. Ballard, and on April 1, 1994 with Dr. Ball.

Accordingly, the Appeals Board finds and concludes that since the respondent did not notify that medical treatment was terminated and further provided additional medical treatment in March and April 1994, that a timely written claim was served by the claimant upon the respondent for compensation benefits on June 22, 1994.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard, dated January 9, 1995, is reversed and an Order is entered by the Appeals Board finding that the claimant did serve a timely written claim on the respondent for compensation benefits. The Appeals Board further remands this case to Administrative Law Judge Steven J. Howard for appropriate findings and orders in regard to claimant's request for medical treatment and temporary total compensation benefits.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Wesley A. Cottrell, Rogers, Arkansas
Wade A. Dorothy, Lenexa, Kansas
Steven J. Howard, Administrative Law Judge
George Gomez, Director